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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,165	07/29/2005	Athanassios Tzikas	4-22830/A/PCT	8577
324	7590	01/15/2009	EXAMINER	
JoAnn Villamizar			KHAN, AMINA S	
Ciba Corporation/Patent Department			ART UNIT	PAPER NUMBER
540 White Plains Road				1796
P.O. Box 2005				
Tarrytown, NY 10591				
MAIL DATE		DELIVERY MODE		
01/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/544,165	TZIKAS ET AL.	
	Examiner	Art Unit	
	AMINA KHAN	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11/12/2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8 and 11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 and 11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

1. This office action is in response to applicant's amendments filed on November 12, 2008.
2. Claims 1-8 and 11 are pending. Claims 9,10,12 and 13 have been cancelled. Claims 3 and 4 have been amended.
3. The rejection of claims 4, 9, and 12 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments to claim 4 and cancellation of the claims 9 and 12.
4. Claims 1-7 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tzikas et al (US patent 6,160,101) in view of Eichhorn (US patent 6,281,340) for the reasons set forth in the previous office action.
5. The rejection of claims 9,10,12 and 13 under 35 U.S.C. 103(a) as being unpatentable over Tzikas et al (US patent 6,160,101) in view of Eichhorn (US patent 6,281,340) is withdrawn in view of applicants cancellation of the claims.
6. Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Tzikas et al (US patent 6,160,101) in view of Eichhorn (US patent 6,281,340) and further in view of Tzikas et al (WO 00/06652).

7. Claims 1 and 8 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/551,319 for the reasons set forth in the previous office action.

Response to Arguments

8. Applicant's arguments filed regarding Tzikas et al (US patent 6,160,101, hereafter Tzikas '101) in view of Eichhorn (US patent 6,281,340), alone or further in view of Tzikas et al (WO 00/06652, hereafter Tzikas '652; US equivalent document US 6,537,332 used for citation purposes since the WO document is not in English) have been fully considered but they are not persuasive. The applicant argues that neither Tzikas '101 nor Eichorn disclose the combination of the dyes of instantly claimed formulas (1) and (2) and the mixture would not be obvious. The examiner respectfully disagrees. Eichorn and Tzikas '101 and '652 are all directed towards effectively dyeing similar fabrics such as cellulosic fibers for the benefits of providing dyed fabrics with good fastness to washing and high color strength, (column 7, lines 60-68; column 25, lines 25-67, column 9, lines 25-50, respectively). It is *prima facie* obvious to combine compositions each taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. See *In re Kerkhoven*, 205 USPQ 1069,1072.

Applicant has not provided evidence indicating that unexpectedly superior dyeing results occur with the combination of the instantly claimed dyes. Applicant's arguments

regarding the compatibility of dyes are not persuasive since no evidence indicating such incompatibility has been presented. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972). Tzikas '652 teach the addition of further dyes not cited in the reference for shading purposes (column 9, lines 1-10).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5 off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amina Khan/
Examiner, Art Unit 1796

/Lorna M Douyon/
Primary Examiner, Art Unit 1796